

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

In re: Children’s Health Defense, *et al.*,

Petitioners.

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No. 26-1121

**OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION TO
PETITION FOR A WRIT OF MANDAMUS**

Pursuant to this Court’s order dated August 26, 2026, the Federal Communications Commission (Commission or FCC) submits this opposition to the petition for a writ of mandamus.

The Commission’s rules specify limits for human exposure to radiofrequency (RF) energy emitted by FCC-regulated facilities and devices above which an environmental analysis is required. In *Environmental Health Trust v. FCC*, 9 F.4th 893, 914 (2021), a divided panel of the Court remanded to the Commission to provide a “reasoned explanation” for its decision to terminate a notice of inquiry into those limits. *See Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Resolution of Notice of Inquiry, ET Docket No. 13-84, 34 FCC Rcd 11687, 11692-97 ¶¶ 10-16 (2019) (*Order*). In terminating its inquiry, the FCC relied in large part on a determination by the Food and Drug Administration (FDA), based on that agency’s review of the scientific literature, that exposure to RF energy at or below the FCC’s limits has no

negative effects on health. *Id.* at 11692-93. The Court agreed “that the Commission may credit outside experts in deciding whether to initiate a rulemaking to modify its [] radiation guidelines.” *Environ. Health Trust*, 9 F.4th at 906. “Absent explanation from the FDA as to how and why it reached its conclusions,” however, the Court held that “the Commission must turn elsewhere or provide its own explanation.” *Id.*

Children’s Health Defense, joined by Environmental Health Trust and three individuals, have now filed a petition for writ of mandamus seeking an order from this Court directing the Commission to provide the reasoned explanation required by the *Environmental Health Trust* decision “within 90 days.” Petition at 7.

That request should be denied. As we explain, the time that the FCC is taking to respond to the Court’s remand is not unreasonable under the circumstances, including the extensive record generated in response to the notice of inquiry and the complexity of the task, which requires the agency to confront “a highly technical subject at the frontier of science.” *Environ. Health Trust*, 9 F.4th at 915 (Henderson, J., dissenting).

There also has been a significant recent development. In order to aid in the fulfillment of its explanatory burden, the Commission has recently released the attached public notice seeking refreshed public comment on the notice of inquiry record. *FCC Seeks Comment On RF Exposure Issues Subject To D.C. Circuit*

Remand In Environmental Health Trust v. FCC, Public Notice, ET Docket No. 13-84 (rel. Sept. 17, 2026) (*Public Notice*). The agency will need time to digest and take account of the comments submitted in response to its invitation. Mandamus is unwarranted.

BACKGROUND

A. Statutory and Regulatory Framework

A variety of products and facilities subject to Commission regulation, including cell phones and equipment deployed on communications towers, emit radiofrequency energy. The FCC's rules specify limits for human exposure to RF energy from FCC-authorized equipment above which analysis is required pursuant to the National Environmental Policy Act (NEPA). 47 C.F.R. §§ 1.1307, 1.1310.¹

In adopting these rules, the FCC gave particular deference to the views of federal health and safety agencies, as well as those of recognized standard-setting bodies.² The Second Circuit upheld the limits against claims based on the disputed

¹ In light of amendments to NEPA and other developments, the FCC sought comment in 2025 on revising its rules implementing NEPA “to streamline the environmental review process” and promote other goals. *Modernizing the Commission's National Environmental Policy Act Rules*, WT Docket No. 25-217, Notice of Proposed Rulemaking, 2025 WL 2417210 (rel. Aug. 14, 2025). The FCC proposed no changes to its RF energy exposure limits. *See id.* n.152.

² The FCC's exposure limits are based on guidelines developed by the National Council on Radiation Protection and Measurements (NCRP), a congressionally chartered organization, as well as guidelines promulgated by the American

(cont'd)

existence of harmful “non-thermal” effects. *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 90 (2d Cir. 2000).³ This Court later affirmed the agency’s refusal to reconsider the limits in response to new scientific studies. *EMR Network v. FCC*, 391 F.3d 269, 274 (D.C. Cir. 2004).

In 2013, the FCC initiated a detailed inquiry posing numerous questions regarding the adequacy of its RF energy exposure limits to protect public health and safety. *Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Notice of Inquiry, ET Docket No. 13-84, 28 FCC Rcd 3498 ¶¶ 205-52 (2013). “We continue to have confidence in the current exposure limits,” the FCC explained, but “given the fact that much time has passed since the Commission last sought comment on exposure limits, as a matter of good government, we wish to develop a current record by opening a new docket with this [*Inquiry*].” *Id.* ¶ 205. The FCC stated that it would continue to “rely heavily — but not exclusively — on the guidance of other federal agencies with expertise in the health field.” *Id.* ¶ 210.

National Standards Institute and the Institute of Electrical and Electronic Engineers, Inc. (IEEE), private standard-setting bodies. Report and Order, 11 FCC Rcd 15123, 15135-52 ¶¶ 28-74 (1996).

³ At high levels, exposure to RF energy can heat body tissue, producing potentially harmful “thermal” effects. The FCC’s limits are set well below the levels that laboratory studies have shown can produce such thermal effects. The limits are not designed to protect against “non-thermal” effects, the existence of which is the subject of longstanding debate. See *Environ. Health Trust*, 9 F.4th at 900-01.

The Commission terminated its inquiry in 2019. *Order*, 34 FCC Rcd at 11692-97 ¶¶ 10-16. “Over 1,000 comments or ex parte presentations were filed in the proceeding,” the agency explained, but the “vast majority of filings were unscientific, and even the filings that sought to present scientific evidence failed to make a persuasive case for revisiting our existing [exposure] limits.” *Id.* at 11694 ¶ 12. The FDA advised the FCC that ““the totality of the available scientific evidence continues to not support adverse health effects in humans caused by exposures at or under the current radiofrequency energy exposure limits.”” *Id.* at 11695 n.42 (quoting *Statement from Jeffrey Shuren, M.D., J.D., director of the FDA’s Center for Devices and Radiological Health on the recent National Toxicology Program draft report on radiofrequency energy exposure* (Feb. 2, 2018)). And “no expert health agency expressed concern about the Commission’s RF exposure limits.” *Id.* at 11692 ¶ 10. Many commenters advocated new limits “that are millions to billions times more restrictive than FCC limits,” but the Commission found no evidence “that such restrictive limits would produce any tangible benefit to human health, or provide any improvement over current protections against established risks.” *Id.* at 11694 ¶ 12. Moreover, “[n]o device could reliably transmit any usable level of energy by today’s technological standards while meeting” such restrictive limits. *Id.* Accordingly, the FCC concluded “that the best available evidence ... supports maintaining our current RF

exposure standards.” *Id.* at 11695 ¶ 13. The FCC also declined to initiate a rulemaking to consider new requirements for evaluating whether cell phones comply with the RF exposure limits. *Id.* at 11695-96 ¶ 14.

B. The *Environmental Health Trust* Decision

The Commission’s *Order* was challenged on various grounds. Among other things, the challengers, who included many of the petitioners here, argued that the FCC arbitrarily failed to acknowledge evidence of harm from exposure to RF energy at levels below FCC limits, including “cancer, radiation sickness, and adverse effects on sleep, memory, learning, perception, motor abilities, prenatal and reproductive health, and children’s health.” *Environ. Health Trust*, 9 F.4th at 902.

This Court ruled that the FCC responded adequately to the available evidence by rejecting the claim that exposure at levels below its RF exposure limits may cause cancer. *Id.* at 903; *id.* at 911-13. The Court found, however, that the Commission had “failed to provide a reasoned explanation for its determination that its guidelines adequately protect against the harmful effects of exposure to radiofrequency radiation unrelated to cancer.” *Id.* at 900; *id.* at 903-08. In the majority’s view, the FDA did not adequately explain why it determined, “despite the studies and comments that Petitioners cite, that exposure to RF radiation at levels below the Commission’s current limits does not cause harmful health

effects.” *Id.* at 905. Absent a reasoned explanation from the FDA, the majority stated, the FCC “must turn elsewhere” for such an explanation “or provide its own explanation.” *Id.* at 906.

The Court held that the lack of a reasoned explanation for the determination that the FCC’s limits prevent harmful non-cancer-related effects from exposure to RF energy undermined the FCC’s “conclusions regarding the adequacy of its [cell phone] testing procedures, particularly as they relate to children, and its conclusions regarding the implications of long-term exposure to RF radiation, exposure to RF pulsation or modulation [methods of imbuing radio waves with information], and the implications of technological developments that have occurred since 1996, all of which depend on the premise that exposure to RF radiation at levels below its current limits causes no negative health effects.” *Id.* at 903; *id.* at 908-09.

The Court also criticized the FCC for failing “to acknowledge ... comments concerning the impact of RF radiation on the environment.” *Id.* at 909. In this regard, the Court highlighted “a letter from the Department of the Interior voicing concern about the impact of RF radiation from communication towers on migratory birds.” *Id.* The FCC “should have said something about its sister agency’s view rather than ignore it.” *Id.* at 910.

The Court did not vacate the *Order*, however. Instead, it remanded the case for the FCC “to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer.” *Id.* at 914. Relatedly, the Court also directed that the agency:

(i) provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines, (ii) address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines, and (iii) address the impacts of RF radiation on the environment.

Id. The Court emphasized, however, that “we take no position in the scientific debate regarding the health and environmental effects of RF radiation.” *Id.*

“[T]here may be good reasons,” the Court stated, “why the various studies in the record ... do not warrant changes to the Commission’s guidelines.” *Id.*

Judge Henderson dissented, arguing that the panel majority improperly relied on tentative conclusions in “five research articles in an over 10,500-page record,” *Environ. Health Trust*, 9 F.4th at 915, and that “the Commission reasonably relied on the conclusions of the FDA, the agency statutorily charged with protecting the public from RF radiation.” *Id.* at 918. In the end, Judge Henderson concluded, “the record [did] not ‘call into question the Commission’s

decision to maintain a stance of what appears to be watchful waiting.” *Id.* at 920 (quoting *EMR Network*, 391 F.3d at 274).

C. The Mandamus Petition

On May 18, 2026, petitioners filed a petition for a writ of mandamus “directing the Commission to comply with the [*Environmental Health Trust*] mandate by providing the required reasoned explanation within 90 days.” Petition at 7. *See also id.* at 39.⁴

On August 26, 2026, this Court ordered the Commission to file a response to the petition within 30 days, i.e., by September 25, 2026.

D. Subsequent Events

On September 17, 2026, the FCC released a *Public Notice* to refresh the record on remand. The *Public Notice* “invite[d] the broadest range of commenters to participate, including local, state, federal, and international health and safety agencies, science-based standard-setting organizations that are active in this area,

⁴ Petitioners also ask the Court to “prohibit the Commission from issuing a final order in any of the several other proceedings where the FCC is trying to further accelerate wireless facility deployment and device utilization before it responds to the order in this case.” Petition at 40. That request, which has nothing to do with the *Environmental Health Trust* remand, should be denied. To the extent that petitioners disagree with the FCC’s orders in separate administrative proceedings, they may petition for review and seek to stay those orders. The existence of that alternative precludes mandamus relief. *See In re Stone*, 940 F.3d 1332, 1338-39 (D.C. Cir. 2019); *In re GTE Service Corp.*, 762 F.2d 1024, 1026 (D.C. Cir. 1985).

and other interested parties,” including “NCRP, IEEE, [and] the International Commission on Non-Ionizing Radiation Protection (ICNIRP),” entities that “have published standards, articles, or information related to RF exposure that may assist in responding to the court’s remand.” *Public Notice*, at 7. The agency will use the record generated in response to this *Public Notice* to help “discharge the Commission’s obligations in response to the Court’s remand in *Environmental Health Trust*.” *Id.* at 3. The filing deadline for comments in response to the *Public Notice* will be October 22, 2026, 30 days after Federal Register publication on September 22, 2026. *Id.* at 1. *See* 91 Fed. Reg. 60128 (Sept. 22, 2026).

STANDARD OF REVIEW

Mandamus is a “drastic” remedy that should be invoked “only in extraordinary circumstances.” *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). It is “an option of last resort, available only if a party lacks adequate alternative remedies.” *Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 962 F.3d 576, 582 (D.C. Cir. 2020). Parties seeking mandamus “must satisfy the burden of showing that [their] right to issuance of the writ is clear and indisputable.” *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 381 (2004); *Illinois v. Ferriero*, 60 F.4th 704, 713 (D.C. Cir. 2023). Even when that stringent showing has been made, “issuance of the writ is in large part a matter of discretion with the court to which the petition is addressed.” *Kerr v. U.S. Dist. Ct. for N. Dist. of Calif.*, 426 U.S. 394, 403 (1976); *Sanchez-Espinoza v. Reagan*, 770 F.2d 202,

207–08 (D.C. Cir. 1985). The issuance of writs directed to agency action is rare “and the scope of relief granted in these cases has been narrow.” *In re Calif. Power Exchange Corp.*, 245 F.3d 1110, 1120 (9th Cir. 2001) (quoting *Pub. Util. Comm’r of Or. v. Bonneville Power Admin.*, 767 F.2d 622, 630 (9th Cir. 1985) (citing cases)).

ARGUMENT

I. PETITIONERS HAVE FAILED TO SHOW THAT A WRIT OF MANDAMUS IS WARRANTED

In considering mandamus petitions based upon claims of unreasonable agency delay, this Court relies on the factors set forth in *Telecommunications Research and Action Center v. FCC*, 750 F.2d 70 (1984) (hereinafter “*TRAC*”).

TRAC articulated six factors as guidance for review of unreasonable delay claims:

(1) [T]he time agencies take to make decisions must be governed by a “rule of reason”; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not “find any impropriety lurking behind agency lassitude in order to hold that agency action is ‘unreasonably delayed.’”

Id. at 79-80 (citations omitted).

Petitioners contend that, because their petition involves a previously-issued Court order directing the agency to take action, its failure to act is “‘decisive.’”

Petition at 24 (quoting *Ctr. for Biological Diversity*, 53 F.4th 665, 671 (D.C. Cir.

2022)). But the Court applies the *TRAC* factors even in such cases. *See Ctr. for Biological Diversity*, 53 F.4th at 671; *In re Core Commc'ns, Inc.*, 531 F.3d 849, 857-58 (D.C. Cir. 2008). Examination of these factors shows that mandamus is not warranted here even under the “lesser showing” needed to justify mandamus in cases involving a previously-issued Court order for agency action. *Ctr. for Biological Diversity*, 53 F.4th at 671 (citing *Core*, 531 F.3d at 855-56).

A. The Time The Commission Has Taken To Examine These Complex Issues Is Not Unreasonable

The “most important [*TRAC*] factor” is that ““the time agencies take to make decisions must be governed by a rule of reason.”” *Core*, 531 F.3d at 855 (quoting *TRAC*, 750 F.2d at 80). This factor “cannot be decided in the abstract, by reference to some number of months or years beyond which agency inaction is presumed to be unlawful.” *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1102 (D.C. Cir. 2003); *In re Pub. Emps. for Env't Resp.*, 957 F.3d 267, 274 (D.C. Cir. 2020) (“[t]here is no *per se* rule as to how long is too long”) (internal quotation marks omitted). Instead, the analysis is a “complicated and nuanced task requiring consideration of the particular facts and circumstances before the court.” *Mashpee Wampanoag*, 336 F.3d at 1100. Whether the agency’s pace satisfies the “rule of reason” depends “upon the complexity of the task at hand, the significance (and permanence) of the outcome, and the resources available to the agency.” *Id.* at 1102. *See Cutler v. Hayes*, 818 F.2d 879, 898 (D.C.

Cir. 1987) (the “complexity of the task confronting the agency” is relevant to ascertaining the reasonableness of delay).⁵

At the outset, we note, the agency has recently taken concrete steps to “discharge the Commission’s obligations in response to the Court’s remand in *Environmental Health Trust*” by issuing a *Public Notice* seeking additional public input on the record generated in the proceeding that led to the 2019 *Order*. *Public Notice*, at 3. In doing so, the agency plans to “give particular weight to submissions that reflect specialized experience in health and safety issues on RF exposure,” *id.*, at 5, and has invited “the broadest range of commenters to participate, including local, state, federal, and international health and safety agencies, science-based standard-setting organizations that are active in this area, and other interested parties.” *Id.*, at 7. The FCC’s action is an important step towards fulfilling the Court’s mandate. As “the proceeding is now moving—albeit with some prodding

⁵ The Court routinely has denied mandamus in cases involving long periods of agency inaction. *See, e.g., Grand Canyon Air Tour Coal. v. FAA*, 154 F.3d 455, 477 (D.C. Cir. 1998) (ten-year delay not “unreasonable”); *Her Majesty the Queen In Right of Ontario v. EPA*, 912 F.2d 1525, 1534 (D.C. Cir. 1990) (delay of “more than nine years” not unreasonable); *TRAC*, 750 F.2d at 80-81 (delay of five years did not warrant mandamus). *Compare In re Pub. Emps.*, 957 F.3d at 274-75 (granting mandamus where agencies failed to comply with statutory mandate for 19 years); *Radio-Television News Dirs. Ass’n v. FCC*, 229 F.3d 269, 270–72 (D.C. Cir. 2000) (granting mandamus where petition to vacate rules was pending for 20 years).

in the form of [the mandamus] petition,” *In re Monroe Commc’ns Corp.*, 840 F.2d 942, 946 (D.C. Cir. 1988), mandamus for that reason alone should be denied.⁶

To be sure, five years have passed since the Court’s remand in *Environmental Health Trust*. That amount of time cannot be considered in the abstract, however, but must take account of the surrounding circumstances, which show that any delay was not unreasonable.

First, the remanded issues involve “a highly technical subject matter at the frontier of science.” *Environ. Health Trust*, 9 F.4th at 915 (Henderson, J., dissenting). *See Cellular Phone Taskforce*, 205 F.3d at 90 (“the existence of non-thermal effects is clouded by a host of conflicting reports and opinions.”) (internal quotation marks omitted). The Commission’s task on remand requires it to evaluate the quality of technical submissions, rather than simply tally viewpoints on each side of the ledger. To that end, the Commission has deemed it necessary to ask a

⁶ *See Grand Canyon*, 154 F.3d at 477 (denying mandamus where the agency was acting to complete its proceeding); *In re Monroe*, 840 F.2d at 946 (same); *In re Am. Fed. of Gov. Empl.*, 790 F.2d 116, 117 (D.C. Cir. 1986) (same); *United Steelworkers of Am. v. Rubber Mfgs. Assn.*, 783 F.2d 1117, 1120 (D.C. Cir. 1986) (per curiam) (same). *See also Oil, Chem. & Atomic Workers Int’l Union v. Zegeer*, 768 F.2d 1480, 1488 (D.C. Cir. 1985) (denying mandamus relief after a five-year delay in the agency’s response to a petition to reduce permissible “radon daughter” exposure levels because the agency was “engaged in an effort to advance the rulemaking process”); *In re Bechtel*, No. 96-1298, 1997 WL 150073, at *1 (D.C. Cir. Feb. 7, 1997) (per curiam) (denying mandamus petition to compel completion of four-year-old remand order where agency represented that it anticipated “agency action concerning the remand ordered ... in the relatively near future”).

host of questions in its *Public Notice* on the methodological rigor of the technical submissions in the record. The questions illustrate the complexity of the agency's task. For example, the *Public Notice* asks whether any such technical submissions or studies:

- “properly bear on the remanded issues,” “come with any acknowledged caveats,” “have been replicated,” “provide longitudinal evidence of non-cancerous adverse health effects or environmental harms,” “are * * * based on self-reported data,” “measure RF exposure through properly calibrated instruments and accepted scientific methods,” “control for confounding factors,” use “proper controls and blinding procedures,” are “based on representative sample sets,” and whether any statistical analysis is “properly performed and sample sets [are] of sufficient size to support conclusions”?;
- if the submissions or studies purport to establish proxies such as oxidative effects, “to what extent do those proxies establish adverse health effects”?;
- if the submissions or studies purport to show adverse health effects on humans, whether they “establish a demonstrated biological mechanism or marker through which such adverse effects are known to occur” and “properly distinguish correlation from causation”?;
- if they purport to be based on literature review, “are the reviews based on weight of scientific evidence”?;

- whether dosimetry (the measurement of doses of radiation) is “properly controlled, evaluated and documented,” and whether “multiple exposure levels [are] studied to establish a dose-response relationship”?; and
- if the submissions or studies are based on experiments or testing in controlled environments, “do those environments credibly resemble realistic deployment scenarios in the United States”?

Public Notice, at 7.

Second, the administrative record is voluminous. “Over 1,000 comments or ex parte presentations were filed in the proceeding.” *Order*, 34 FCC Rcd at 11694 ¶ 12. Although “[t]he vast majority of filings were unscientific,” *id.*, the “record contained substantial information and material” in addition to the research articles highlighted by the majority. *Environ. Health Trust*, 9 F.4th at 910. *See id.* at 903-04. *See also id.* at 915 (referencing the “over 10,500-page record” that the petitioners filed with the Court) (Henderson, J., dissenting). And the FDA recommendation on which the FCC relied rested on that agency’s considered analysis of “‘all,’ ‘the weight,’ or ‘the totality’ of ‘scientific evidence.’” *Id.* at 905. *See Public Notice*, at 7 (encouraging input from recognized standard-setting bodies, including NCRP, IEEE, and the ICNIRP, each of which “has published standards, articles, or information related to RF exposure”). Because the task before the agency is complex and the record voluminous, “it is to be expected that consideration of such

matters will take longer than might rulings on more routine items.” *In re Monroe Commc’ns*, 840 F.2d at 946.

Third, “the significance ... of the outcome” can hardly be exaggerated. *Mashpee Wampanoag*, 336 F.3d at 1102. The FCC’s limits on exposure to RF energy regulate wireless devices that are “ubiquit[ous].” *Environ. Health Trust*, 9 F.4th at 914. Indeed, according to the United States Census Bureau, in 2024, an estimated 93% of American households had a smartphone. <https://data.census.gov/table?q=smartphone>. And it is reported that “the wireless industry adds more than \$825 billion in [Gross Domestic Product] annually to the American economy.” See, e.g., *In the Matter of 2024 Communications Marketplace Report*, GN Docket No. 24-119, Comments of Cellular Telephone Industry Association at iii (June 6, 2024) (<https://api.ctia.org/wp-content/uploads/2024/06/240606-FINAL-CTIA-Comments-for-2024-Communications-Marketplace-Report.pdf>). Because the agency’s examination of the effects of RF energy exposure on human health could have broad ramifications, the agency must be meticulous in its analysis.

Fourth, consideration of “the resources available to the agency” reflects that its delay is not unreasonable. *Mashpee Wampanoag*, 336 F.3d at 1102. The FCC generally lacks “the expertise to interpret[] the biological research necessary to determine what [RF radiation] levels are safe,” *Environ. Health Trust*, 9 F.4th at 920 (Henderson, J., dissenting) (internal quotation marks omitted), and for that

reason has up to now depended on, and deferred to, other health and safety agencies that are more expert in this area. *See id.* at 906-07. *See Mashpee Wampanoag*, 336 F.3d at 1100 (denying mandamus where the agency’s delay was “attributable, at least for the most part, to a shortage of resources addressed to an extremely complex and labor-intensive task.”).

B. There Is No Statutory Deadline

The second *TRAC* factor, presence or absence of a statutory deadline, does not weigh in favor of mandamus. As petitioners acknowledge, Petition at 27-28, Congress has not prescribed a timetable for the Commission to act.

C. The Record Does Not Demonstrate A Substantial Health Risk

Nor does the third *TRAC* factor—effects on human health and welfare—“weigh[] heavily in favor of mandamus,” as petitioners contend. Petition at 29-30. The FCC’s RF energy exposure limits are structured to protect human health, and the Commission takes its charge “to protect the public from any potential harm due to RF exposure seriously.” *Order*, 34 FCC Rcd at 11693 ¶ 11. Thus, before the Commission terminated its inquiry in 2019, it obtained a statement from the FDA that the “totality of the available scientific evidence continues to not support adverse health effects in humans caused by exposures at or under the current radiofrequency energy exposure limits.” *Id.* at 11695 n.42.

The Court “[took] no position in the scientific debate regarding the health and environmental effects of RF radiation.” *Environ. Health Trust*, 9 F.4th at 914.

Indeed, it acknowledged that “there may be good reasons why the various studies in the record ... do not warrant changes to the Commission’s guidelines.” *Id.*

Instead, the Court “merely conclude[d] that the Commission’s cursory analysis * * * was insufficient.” *Id.*

Nothing in the *Environmental Health Trust* decision suggests that the Commission’s RF energy exposure limits cannot be justified on remand. There is thus “insufficient record evidence that a substantial health risk would result from some further delay.” *In re United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 553 (D.C. Cir. 1999).⁷

D. Mandamus Would Divert Agency Resources From Other Pressing Matters

The fourth *TRAC* factor directs the Court to consider “the effect of expediting delayed agency action on agency activities of a higher or competing priority.” 750 F.2d at 80. The remand is only one of the Commission’s myriad responsibilities, some of which relate to safeguarding national security. *See China Telecom (Ams.) Corp. v. FCC*, 57 F.4th 256, 261 (D.C. Cir. 2022). The FCC currently is engaged in a number of important, complex proceedings, many of

⁷ Petitioners claim that the “FCC’s 1996 exposure limits are the highest in the world.” Petition at 20. In fact, the FCC’s limits “are more restrictive than other more recently published international limits.” *Order*, 34 FCC Rcd at 11694 ¶ 11; *id.* at 11695 ¶ 13. The IEEE and ICNIRP limits for mobile devices are two watts per kilogram averaged over 10 grams of tissue, compared to the FCC’s more restrictive standard of 1.6 watts per kilogram averaged over one gram of tissue. *See id.* n.35.

which are subject to statutory deadlines. *See, e.g., In the Matter of Upper C-Band (3.98-4.2 GHz)*, No. 18-122, 2026 WL 2186867, at *16 ¶ 47 (rel. July 24, 2026) (discussing the One Big Beautiful Bill Act, Pub. L. No. 119-21, § 40002, 139 Stat. 72 (2025), which requires the FCC to issue licenses for not less than 100 megahertz of spectrum in the Upper C-band through a competitive bidding process by July 4, 2027, and directs the Assistant Secretary of Commerce, in consultation with the FCC, to identify 500 megahertz of spectrum for high-power, high-density, and wide-area commercial mobile services).⁸

Courts “are properly hesitant to upset an agency’s priorities by ordering it to expedite one specific action, and thus to give it precedence over others.” *Sierra Club v. Thomas*, 828 F.2d 783, 797 (D.C. Cir. 1987). The relief requested in the

⁸ *See also Reforming Legacy Rules for an All-IP Future*, Notice of Proposed Rulemaking, WC Docket Nos. 25-311, 25-208 (rel. Feb. 19, 2026) (seeking comment on reforms to accelerate the transition from legacy switched access networks to all-Internet Protocol networks by eliminating outdated regulations); *2022 Quadrennial Regulatory Review*, MB Docket No. 22-459, 2025 WL 4481295 *1 ¶ 1 (2025) (seeking comment on the Commission’s media ownership rules pursuant to section 202(h) of the Telecommunications Act of 1996, which mandates review of such rules every four years to determine whether they remain “necessary in the public interest as the result of competition” and to “repeal or modify any regulation [that it] determines to be no longer in the public interest”); *Modernizing the Commission’s National Environmental Policy Act Rules*, 2025 WL 2417210 (2025) (proposing to reform the agency’s rules implementing NEPA pursuant to the Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023), and *Unleashing American Energy*, Exec. Ord. No. 14154, 90 Fed. Reg. 8353, 8355 (2025), directing agencies to streamline their procedures for environmental review and to “prioritize efficiency and certainty”).

petition would improperly “put the petitioner[s] ‘at the head of the queue’ while ‘mov[ing] all others back one space.’” *In re Pub. Emps.*, 957 F.3d at 275 (alteration in original) (quoting *In re Barr Lab’ys, Inc.*, 930 F.2d 72, 75 (D.C. Cir. 1991)).

E. Petitioners Have Identified No Other Interests That Would Be Prejudiced By Delay

The fifth *TRAC* factor requires consideration of the “nature and extent of the interests prejudiced by delay.” 750 F.2d at 80. Petitioners contend that the Commission’s failure to act prejudices them “because of [the] ongoing health and environmental effects,” Petition at 31, but they identify no other interests that would be adversely affected. As we have explained, p. 18-19 *supra*, the Court took “no position” as to any health and environmental effects; it focused “merely” on the inadequacy of the Commission’s “cursory analysis” with regard to non-cancer-related effects of exposure to RF energy at or below the level of the agency’s limits. *Environ. Health Trust*, 9 F.4th at 914. The Court affirmed the FCC’s rejection of the claim that exposure at levels below its RF exposure limits may cause cancer. *Id.* at 903; *id.* at 911-13. This factor therefore adds no additional weight to petitioners’ claims for relief.

F. The Commission Is Acting In Good Faith

Finally, although the Court need not find “impropriety lurking behind agency lassitude,” *TRAC*, 750 F.2d at 80, petitioners do not claim that the Commission’s delay is the product of bad faith. Instead, they contend that, “even if

not in bad faith, the FCC’s rush to accelerate wireless buildout while doing nothing to address the remand strongly implies an intent” to avoid action that “might complicate deployment and operation” of wireless facilities. Petition at 31. That claim is unfounded. Wireless facilities deployment lies at the heart of the Commission’s statutory charge “to make available ... a rapid, efficient, Nation-wide, and world-wide ... radio communication service with adequate facilities.” 47 U.S.C. § 151. And “agencies have ‘significant latitude as to the manner, timing, content, and coordination of [their] regulations.’” *City of Portland v. United States*, 969 F.3d 1020, 1047 (9th Cir. 2020) (quoting *Mass. v. EPA*, 549 U.S. 497, 533 (2007)). The FCC was not obliged to halt its approval of further wireless deployment, and thereby to forego the important public interest benefits of improved wireless service, while it responded to the Court’s instruction that it provide more explanation for its decision not to revisit its RF energy exposure limits.

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In sum, the Commission has not unreasonably delayed action in responding to the Court’s remand, and the extreme remedy of mandamus is not warranted. The Court should therefore deny the petition.⁹

⁹ If the Court were nevertheless to decide to issue a writ of mandamus, it should reject petitioners’ request to have the Commission provide a reasoned explanation “within 90 days.” Petition at 7, 39. The record is complex and voluminous. The
(cont’d)

CONCLUSION

The petition for a writ of mandamus should be denied.

Respectfully submitted,

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Commission also needs to take account of public comments that are to be submitted in response to its recent *Public Notice*. Under the circumstances, the Commission would require a minimum of nine months from the October 22, 2026 deadline for comments in response to the *Public Notice* to consider, prepare, and adopt an adequate explanation responding to the *Environmental Health Trust* remand. Petitioners' request for this Court to "retain jurisdiction" and "require a 45-day status update," Petition at 40, should likewise be denied.

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PUBLIC NOTICE

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DA 26-997

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**FCC SEEKS COMMENT ON RF EXPOSURE ISSUES SUBJECT TO
D.C. CIRCUIT REMAND IN *ENVIRONMENTAL HEALTH TRUST V. FCC***

ET Docket No. 13-84

Comments due: 30 days after publication in the Federal Register

Since the birth of the American wireless industry, the Federal Communications Commission has been entrusted to develop spectrum policies that bring economic prosperity, unleash innovation and investment, and promote national security as well as safety of life. Spectrum-based connectivity enabled by Commission policies has brought billions of dollars for the U.S. Treasury, created millions of jobs, served as an essential platform for U.S. tech innovation, bolstered America's geopolitical leadership, and driven down prices for consumers. Looking ahead, the U.S. government has determined that leading the world in 5G and 6G will require the Commission to auction large amounts of licensed spectrum and enable large swaths of unlicensed and satellite spectrum for next-generation services.

The Communications Act establishes the Commission's primacy over commercial spectrum policymaking, and the Working Families and Tax Cut Act, signed by President Trump in July 2025, directed the Commission to repurpose and auction 800 megahertz of spectrum, including 500 megahertz of federal spectrum for "full-power commercial licensed use cases[.]"¹ Along the way, courts have repeatedly affirmed that when the Commission "foster[s] innovative methods of exploiting the spectrum" in its role "as a policymaker," it is "accorded the greatest deference by a reviewing court."²

As an essential component of this policymaking function, Congress entrusted the Commission in 1996 to adopt rules regarding human exposure to RF energy emitted by Commission-regulated transmitters and facilities.³ The Commission's RF exposure rules⁴ are continuously evaluated and based

¹ Pub. L. No. 119-21, § 40002(c)(1), 139 Stat. 129 (2025).

² *Mobile Relay Associates v. FCC*, 457 F.3d 1, 8 (D.C. Cir. 2006) (cleaned up); *see also AT&T Servs. v. FCC*, 21 F.4th 841 (D.C. Cir. 2021) (upholding the FCC's order permitting unlicensed operations in the 6 GHz band) and *Pub. Safety Spectrum Alliance v. FCC*, No. 24-1363, 2026 LX 21636 (D.C. Cir. July 21, 2026) (upholding the FCC's order establishing new public safety rules for the 4.9 GHz band).

³ *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 704(b), 110 Stat. 56, 152 (directing the Commission to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions"); *see also 2019 Resolution of Notice of Inquiry, Second Report and Order, and NPRM*, 34 FCC Rcd at 11689, para. 6 n.5; *2013 R&O, FNPRM, and NOI*, 28 FCC Rcd at 3503, 3530-31, paras. 10, 103 n.176.

⁴ 47 CFR §§ 1.1307, 1.1310. *See Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93-62, First Report and Order, 11 FCC Rcd 15122 (1996) (*1996 Order*); *FCC Amends RF Emissions* (continued....)

on gold-standard research from entities with specialized expertise in health and safety issues, including the National Council on Radiation Protection and Measurements (NCRP), a congressionally chartered organization, as well as guidelines promulgated by the American National Standards Institute and the Institute of Electrical and Electronics Engineers (IEEE), internationally recognized standard-setting organizations.⁵ Courts have consistently upheld the reasonableness of the Commission's RF human-safety requirements when challenged in 2000,⁶ 2004,⁷ and 2021.⁸

Most recently, the Commission terminated a nearly six-year inquiry in December 2019, which had sought comment on whether the agency's RF safety rules should be reevaluated.⁹ Upon consideration of nearly 1,000 submissions, the Commission "conclude[d] that the best available evidence . . . supports maintaining [its] current RF exposure standards."¹⁰ The D.C. Circuit's 2021 decision in *Environmental Health Trust v. FCC* upheld the majority of the Commission's findings, including its determination that RF exposure at levels below the current limits does not cause cancer.¹¹ The panel also rejected arguments that the Commission had violated the Administrative Procedure Act by "fail[ing] to respond to various 'additional legal considerations'" and that it had violated NEPA by failing to conduct an environmental review regarding its decision to terminate the *Notice of Inquiry*.¹²

Rules and Adopts Notice of Proposed Rulemaking Seeking Comment on Preemption of State and local RF Regulations, ET Docket Nos. 93-62, 97-192, RM-8577, Second Memorandum Opinion and Order, 12 FCC Rcd 13494 (1997); 2013 R&O, FNPRM, and NOI; and 2019 Resolution of Notice of Inquiry, Second Report and Order, and FNPRM.

⁵ *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93-62, Report and Order, 11 FCC Rcd 15123, 15135-52, paras. 28-74 (1996).

⁶ See *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 90-94 (2d Cir. 2000).

⁷ *EMR Network v. FCC*, 391 F.3d 269, 274 (D.C. Cir. 2004).

⁸ *Env't Health Tr. v. FCC*, 9 F.4th 893, 911-12 (D.C. Cir. 2021) (upholding, *inter alia*, the FCC's determination that exposure to RF radiation at levels below the current limits will not cause cancer).

⁹ 2019 Resolution of Notice of Inquiry, Second Report and Order, and NPRM, 34 FCC Rcd at 11692, para. 10; see also Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies; Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields, ET Docket Nos. 13-84 and 03-137, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 28 FCC Rcd 3498, 3501-02, 3570-89, paras. 5-7, 205-52 (2013) (2013 R&O, FNPRM, and NOI). The Commission's rules specify limits for human exposure to RF emissions from Commission-regulated transmitters and facilities above which analysis is required pursuant to the National Environmental Policy Act of 1969, as amended (NEPA). See 47 CFR §§ 1.1307, 1.1310; see also 42 U.S.C. § 4321 *et seq.* The resolution of the Notice of Inquiry was part of a larger 2019 item. Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies; Targeted Changes to the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields, ET Docket Nos. 03-137, 13-84, and 19-226, Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 34 FCC Rcd 11687 (2019) (2019 Resolution of Notice of Inquiry, Second Report and Order, and NPRM), *aff'd in part and remanded in part*, *Env't Health Tr. v. FCC*, 9 F.4th 893 (D.C. Cir. 2021).

¹⁰ 2019 Resolution of Notice of Inquiry, Second Report and Order, and NPRM, 34 FCC Rcd at 11692-95, paras. 10-13.

¹¹ *Env't Health Tr.*, 9 F.4th at 903, 911-12.

¹² *Id.* at 912-14.

The panel maintained the legal force of the Commission's RF safety rules, which remain effective today and have allowed Americans to benefit from world-leading networks. At the same time, the panel remanded for the Commission "to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer."¹³ The panel specifically directed the Commission to address three targeted issues: (1) "its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines"; (2) "the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines"; and (3) "the impacts of RF radiation on the environment."¹⁴ Importantly, the panel did not vacate the 2019 decision—it merely directed the Commission to provide further explanation to justify its findings as to these specific issues.

By this *Public Notice*, we seek to refresh the record on these targeted issues to discharge the Commission's obligations in response to the Court's remand in *Environmental Health Trust*. In all cases, the Commission found in 2019 that the nearly six-year record failed to justify a change to the Commission's rules. We seek comment on that finding. We emphasize that, in light of the limited scope of the court's remand, we do not seek comment here on any other aspects of the 2019 decision that were upheld in *Environmental Health Trust* or portions of the record that were not properly before the court.¹⁵

* * *

The panel's opinion in *Environmental Health Trust* took "no position in the scientific debate regarding the health and environmental effects of RF radiation."¹⁶ Rather, it pointed to submissions and studies in the record that the Commission did not address in consideration of the specific issues identified above.¹⁷ The panel did not endorse those submissions, whereas the dissent specifically determined that many of them were insufficient to warrant the Commission's explicit analysis. The panel did, however, acknowledge "that there may be good reasons" why those submissions "do not warrant changes to the Commission's guidelines."¹⁸ The panel further noted that "if those six sources fairly represented the credible record evidence seeking a change in Commission policy," then the criticisms of those sources in the dissenting opinion "would have sufficed" as reasoned decision-making.¹⁹ We seek comment on the submissions specifically cited and discussed in the *Environmental Health Trust* opinion. Are they representative of record evidence seeking a change in the Commission's rules? Do they demonstrate sufficient indicia of quality, reliability, or rigor to justify a change in the Commission's rules?

¹³ *Id.* at 914; *see id.* at 903-08.

¹⁴ *Env't Health Tr.*, 9 F.4th at 914; *see id.* at 908-10.

¹⁵ *See generally* 2019 Resolution of Notice of Inquiry, Second Report and Order, and NPRM.

¹⁶ *Env't Health Tr.*, 9 F.4th at 914.

¹⁷ *Id.* at 903-10.

¹⁸ *Id.* at 914.

¹⁹ *Id.* at 910. *But see id.* at 915-16 (Henderson, K., dissenting in part) ("[a] close inspection of the five research articles confirms that they 'are nothing if not tentative'" (internal citation omitted); *see also id.* (Henderson, K., dissenting in part) (concluding that "[b]ecause the studies on which the majority relies plainly are tentative, they do not challenge a fundamental premise of the Commission's decision and therefore cannot provide the basis for the majority's limited remand under our precedent" while noting that five articles, among other observed shortcomings, variously fail to offer conclusive evidence or find negative health effects, provide "a murky picture of the current science," "fail[] to address . . . whether RF radiation below the Commission's current limits can cause negative health effects," and may have been "conducted at RF radiation levels below the Commission's current limits").

The panel's remand—both as to the Commission's decision to maintain its existing testing procedures, and the Commission's determination that its RF exposure limits did not pose adverse health effects to children—flowed from the Commission's purported failure to provide sufficient justification for its finding that “exposure to RF radiation at levels below its current limits does not cause negative health effects unrelated to cancer.”²⁰ In so finding, the panel pointed largely to five articles that the Commission did not discuss regarding the putative non-cancerous effects of RF exposure below the prescribed levels.²¹

We seek comment on whether “the five articles on which the majority opinion relie[d] ... do not challenge a fundamental premise of the Commission's order” and we ask the same question as to any record information that the panel identified in arriving at its holding.²²

- One such article, the dissenting opinion noted, purported to present evidence of non-cancerous “oxidative effects” but conceded that it “[*did*] not provide conclusive evidence of causal effects and should be *interpreted with caution* until confirmed in other population.”²³
- Another meta-analysis, the dissent observed, summarized the results of human studies on the behavioral effects of RF radiation and identified “31 studies that showed no significant behavioral effects compared to 20 studies that showed behavioral effects,” including “four [that] found behavioral improvements, not negative health effects.”²⁴
- Yet another, according to the dissent, failed to “address the critical issue—whether RF radiation below the Commission's current limits can cause negative health effects” because it examined the International Commission on Non-Ionizing Radiation Protection's (ICNIRP) recommended RF exposure limit, which “is significantly higher than the Commission's current limit—0.08 W/kg averaged over the whole body and a peak spatial-average of 1.6 W/kg over any 1 gram of tissue.”²⁵
- And yet another, the dissent noted, acknowledged that “the health effects of [exposure to radiofrequency electromagnetic fields (RF-EMFs)] are still unknown ... [and] to date studies addressing this topic have produced inconsistent results.”²⁶

²⁰ *Id.* at 908.

²¹ *Id.* at 903-04. The panel held that Commission's order disregarded the five studies and additional record information. *E.g., id.* at 903-904 (summarizing the Petitioners' reliance on multiple studies and reports and comments submitted by individuals); *id.* at 910 (referencing additional record information).

²² *Id.* at 916; *see also id.* at 903-904 and 910.

²³ *Id.* at 915 (Henderson, K., dissenting in part) (observing that the Foerster article concludes “[o]ur findings *do not provide conclusive evidence* of causal effects and should be *interpreted with caution* until confirmed in other population.”) (internal citation omitted).

²⁴ *Id.* (Henderson, K., dissenting in part) (“The Lai article provides a similarly murky picture of the current science” as did the Foerster article).

²⁵ *Id.* at 916 (Henderson, K., dissenting in part) (observing that “it is uncertain how many, if any, of the referenced peer-reviewed studies were conducted at RF radiation levels below the Commission's current limits”).

²⁶ *Id.* at 915 n.2.

- Still another, according to the dissent, “found decreases in figural memory” but acknowledged that “some experimental and epidemiological studies on RF-EMF found improvements in working memory performance.”²⁷
- And a final study, the dissenting opinion remarked, was “hardly worth discussing because the self-published report has been widely discredited as a biased review of the science.”²⁸

We seek comment on the foregoing discussion regarding the credibility and probative value of these studies.

With respect to environmental considerations, the panel faulted the Commission for not discussing a 2014 letter from the Department of Interior on the impact of communications towers to migratory birds.²⁹ As the dissent noted, the Department of Interior’s letter found that “no independent, third-party field studies have been conducted in North America on impacts of tower electromagnetic radiation on migratory birds.”³⁰ We seek comment on the probative value of the Department of Interior’s letter.

* * *

Beyond the submissions discussed in *Environmental Health Trust*, we seek comment on whether other record evidence properly before the court—namely, submissions filed after our 2013 *Notice of Inquiry* and before our 2019 decision to terminate the *Notice of Inquiry*—warrants the Commission revisiting its RF exposure rules on the specific issues subject to remand identified above. We also seek comment on whether record evidence affirmatively supports our rules or casts doubt on the reliability of submissions to the contrary.

As with our prior efforts, we intend to give particular weight to submissions that reflect specialized experience in health and safety issues on RF exposure. In prioritizing the quality of submissions over their quantity,³¹ we do not anticipate affording such scientific weight to meta-analyses that simply compile studies marked by wide ranges in scientific rigor and differing and sometimes contradictory conclusions. Nor do we anticipate affording such weight to unverifiable or repetitive testimonial submissions that purport to assert the existence or absence of adverse health effects. Probative value will be accorded to parties who have demonstrated a capacity to interpret the biological research necessary to assess the health impact of RF emissions and determine what exposure levels are considered safe for humans, and who can do so with sufficient detail and persuasiveness to overcome the failings that the court identified when the Commission last attempted to rely on the expertise of expert agencies.

²⁷ *Id.*

²⁸ *Id.* at 916 n.3.

²⁹ *Id.* at 909-10.

³⁰ *Id.* at 916-17 (Henderson, K., dissenting in part) (identifying substantive and procedural shortcomings related to the petitioners’ reliance on the Department of Interior’s letter, noting that the letter itself concedes that “no independent, third-party field studies have been conducted in North America on impacts of tower electromagnetic radiation on migratory birds”) (internal citation omitted).

³¹ See, e.g., *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. 311, 503-04, paras. 344-345 (2018), *aff’d in part, vacated in part, and remanded sub nom. Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).

For instance, on potential environmental impact from RF, we encourage input from science-based standard-setting organizations and other interested parties and request that commenters describe their relevant qualifications and subject-matter expertise, and provide sufficient supporting information so that we may evaluate the methodological rigor underpinning their views and claims. We note the work of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), who “finds good quality studies show no effect from radio waves on plants and animals,”³² and the ongoing work of the ICNIRP Project Group on Environmental EMF Protection tasked to “draft a statement on environmental effects of EMFs on the basis of qualitatively reliable scientific papers.”³³ We also invite comment on our testing procedures for determining whether cell phones and other portable electronic devices comply with our guidelines. As stated in Commission rules, guidance regarding applicable measurement techniques for the evaluation of compliance for portable devices can be found in the Office of Engineering and Technology (OET) Laboratory Division Knowledge Database (KDB).³⁴

In particular, we ask that parties addressing the Commission’s past findings that “[t]he weight of scientific evidence has not linked cell phones with any health problems,” that “the current safety limits for cell phones are acceptable for protecting the public health,” that the “totality of the available scientific evidence continues to not support adverse health effects in humans caused by exposures at or under the current radiofrequency energy exposure limits,” and that “no changes to the current standards are warranted at this time,”³⁵ clearly articulate the factual bases for their positions. Commenters who choose to address the body of scientific studies regarding the issues on remand, including the alleged existence of adverse effects to humans from low-level RF exposure, potential impacts on children, and potential health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines, should clearly describe their specialized experience and subject-matter expertise that makes them well qualified to address such matters.

³² Brzozek et al., *Investigating the Impact of Anthropogenic Radiofrequency Electromagnetic Fields on Animals and Plants in the Environment: Analysis from a Systematic Map*, 81 Int’l J. of Env’t Stud. 2343 (2024), <https://doi.org/10.1080/00207233.2024.2375861>. Summarized on the ARPANSA website, *Good Quality Research Shows No Environmental Effects from Radio Waves* (Aug. 22, 2024), <https://www.arpansa.gov.au/good-quality-research-shows-no-environmental-effects-radio-waves>.

³³ ICNIRP, *Working Groups* (last visited Aug. 31, 2026), <https://www.icnirp.org/en/about-icnirp/working-groups/index.html>.

³⁴ See 47 CFR 2.1093(d)(2). Evaluation of compliance for portable devices can be demonstrated by either laboratory measurement techniques or by computational modeling. Guidance regarding applicable measurement techniques can be found in the OET Laboratory Division KDB. The staff guidance provided in the KDB does not necessarily represent the only acceptable methods for measuring RF exposure or RF emissions, and is not binding on the Commission or any interested party. Current RF exposure procedures and equipment authorization policies for mobile and portable devices are published in KDB 447498.

³⁵ 2019 Resolution of Notice of Inquiry, Second Report and Order, and NPRM, 34 FCC Rcd at 11692, 11692-93, 11695, paras. 10, 11, 12 n.42 (internal quotation marks omitted). We also note that in February 2020, subsequent to our 2019 Resolution of Notice of Inquiry, the FDA published a comprehensive literature review of radiofrequency exposure and cancer, available online from the FDA at <https://www.fda.gov/media/135043/download> (last visited Aug. 31, 2026). The review summarizes the FDA’s evaluation of approximately 125 peer-reviewed animal studies and 70 peer-reviewed epidemiological studies of possible links between radiofrequency exposure and cancer. It finds that, “there is no quantifiable causal link between RFR exposure and tumor formation,” and the FDA affirms on their webpage that “the current limit on radio frequency (RF) energy set by the [Federal Communications Commission remains acceptable for protecting](#) the public health” and that “to date, there is no consistent or credible scientific evidence of health problems caused by the exposure to radio frequency energy emitted by cell phones.” See U.S. Food & Drug Admin. *Cell Phones*, <https://www.fda.gov/radiation-emitting-products/cell-phones/scientific-evidence-cell-phone-safety> (last visited Aug. 31, 2026).

As we consider how much weight to give to submissions or studies that purport to cast doubt on our RF exposure rules on the issues encompassed by the court's remand, we seek comment on their methodological rigor. What is the scope of such studies, do they properly bear on the remanded issues, and do they come with any acknowledged caveats? Does the record provide evidence that such studies have been replicated? Do such studies provide longitudinal evidence of non-cancerous adverse health effects or environmental harms? Does the record contain epidemiologic evidence that considers the ubiquitous saturation of cell phones in the American population over time? Do any such studies establish a demonstrated biological mechanism or marker through which such adverse effects are known to occur? If they purport to establish proxies such as oxidative effects, to what extent do those proxies establish adverse health effects? If they purport to show adverse health effects on humans, do they properly distinguish correlation from causation? If they purport to be based on literature review, are the reviews based on weight of scientific evidence? Are they based on self-reported data? Do they measure RF exposure through properly calibrated instruments and accepted scientific methods? Is dosimetry properly controlled, evaluated and documented? Are multiple exposure levels studied to establish a dose-response relationship, and do they substantiate an adverse health effect in humans at exposure levels below Commission limits? Do they control for confounding factors? Are proper controls and blinding procedures implemented in the study design? Are they based on representative sample sets? Are statistical analyses properly performed and sample sets of sufficient size to support conclusions? If they are based on experiments or testing in controlled environments, do those environments credibly resemble realistic deployment scenarios in the United States? If such studies are based on animal-based experiments, to what extent do they properly establish adverse health effects on humans?

While the scope of issues the Commission invites comment on is narrowly confined to record evidence that was properly before the court in *Environmental Health Trust*, we invite the broadest range of commenters to participate, including local, state, federal, and international health and safety agencies, science-based standard-setting organizations that are active in this area, and other interested parties.³⁶ These include, but are not limited to, NCRP, IEEE, the International Commission on Non-Ionizing Radiation Protection (ICNIRP), and parties directly engaged with other competent bodies that are involved in this area.³⁷ These entities have published standards, articles, or information related to RF exposure that may assist in responding to the court's remand.³⁸

* * *

³⁶ 2013 R&O, FNPRM, and NOI, 28 FCC Red at 3575, para. 219. We note that this is similar to the 2013 *Notice of Inquiry* where the Commission stated that, “[i]n addition to seeking input from federal health and safety agencies and institutes, we solicit comment from national and international standards organizations (specifically including NCRP and IEEE) on the currency of their exposure limits and supporting documents in light of recent research and [the International Agency for Research on Cancer’s] announcement on its classification of RF fields.” *Id.*

³⁷ IEEE is a non-profit international professional association of electrical and electronics engineers involved in technology standards development. ICNIRP is an international non-profit organization comprised of independent scientific experts that provides scientific advice and guidance on the health and environmental effects of non-ionizing radiation (NIR) to protect people and the environment from detrimental NIR exposure. The NCRP is a nonprofit corporation chartered by Congress in 1964 primarily to collect, analyze, develop, and disseminate information on radiation protection.

³⁸ See, e.g., Inst. of Elec. and Elec. Eng’g, *IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 0 Hz to 300 GHz*, IEEE Std C95.1- 2019 (2019); Int’l Comm. on Non-Ionizing Radiation Protection, *ICNIRP Guidelines for Limiting Exposure to Electromagnetic Fields (100 kHz to 300 GHz)*, 118 Health Phys. 483 (2020); Nat’l Council on Radiation Protect. & Measurements, <https://non-ionizing.ncrponline.org/> (last visited, Aug. 31, 2026).

Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

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Ex Parte Rules. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .docx, .xml, .pptx, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Further Information. Questions regarding this *Public Notice* may be directed to the FCC's RF Safety Program at rf-safety@fcc.gov. Comments and reply comments to this Public Notice must be filed in ET Docket 13-84 using the procedures described above and should not be sent to this mailbox.

³⁹ 47 CFR § 1.1200 *et seq.*